Supreme Court, U.S.
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No. 01-18

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA,

Petitioner,

v.

JERRY LAYNE ROGERS, SR.,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Florida

MEMORANDUM OPPOSING CERTIORARI

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August 1, 2001

MEMORANDUM OPPOSING CERTIORARI

The State argues in its Petition for Certiorari that the Florida Supreme Court "altered" this Court's longstanding analysis under *Brady v. Maryland*, 373 U.S. 83 (1963), by "eliminating" a requirement that a defendant exercise due diligence in pursuing *Brady* materials. The State's position is so clearly without merit that Respondent Jerry Layne Rogers, Sr., submits this brief memorandum opposing certiorari. Should the Court deem it necessary, Rogers will submit more extensive briefing as to why certiorari should be denied.

The Florida Supreme Court found violations of *Brady* based on three separate categories of withheld material: (1) a confidential informant's report that identified another suspect in the murder; (2) a confession of the State's key witness that contained numerous false statements and false accusations of Rogers; and (3) a tape recording in which the prosecutor, before trial, coached and adjusted the testimony of the key witness against Rogers.

These withheld materials could not possibly present the "due diligence" issue on which the State rests its petition. The materials were unknown to the defense, were known solely to the prosecutor and police, and could not plausibly have been found by the defense no matter how diligently they were pursued.

In any event, these materials <u>were</u> in fact pursued diligently. The Florida Supreme Court specifically noted that Rogers "requested all *Brady* material" from the State.

(A-12.)[1] Furthermore, Rogers deposed the lead police investigator several times, and requested all of the records concerning the Winn-Dixie crime. (*Id.*) Rogers could not have known that the police had a report implicating another man in the murder, or that the prosecution had only produced one of the two confessions of its key witness, or that the prosecution had tape-recorded a "coaching" session with that key witness.

The State's petition therefore proceeds on a false premise in asserting that the Florida Supreme Court "eliminated" the "diligence requirement" of *Brady*. This case presents no issue of the defendant's diligence. The Florida Supreme Court had no reason to engage in a lengthy analysis of the defendant's diligence in a case where the withheld evidence could not reasonably have been discovered no matter how diligent the defendant. That is a far cry from "eliminating" an obligation of diligence. The facts of this case plainly show that Rogers acted with due diligence, and further that his diligence was not the issue.

The Florida Supreme Court explicitly followed this Court's *Brady* formulation as set forth in *Strickler v. Greene*, 527 U.S. 263 (1999). This case presents an obvious violation of *Brady* -- as found unanimously by the Florida Supreme Court. The petition for certiorari accordingly should be denied.

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[1] References to pages in the Petitioner's Appendix are cited as "A-#."

Respectfully submitted,

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